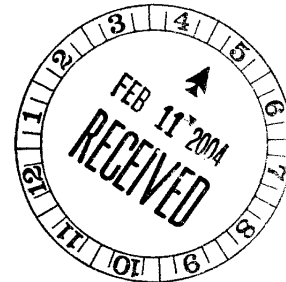




Frank J. Reed, Jr.  
Writer's Direct Dial: (614) 233-9304  
Writer's Email: freed@bfca.com

ENTERED  
Office of Proceedings  
FEB 12, 2003  
Part of  
Public Record



February 9, 2004

**VIA OVERNIGHT MAIL**

Hon. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K. Street, N.W.  
Washington, D.C. 20423

Re: New Complaint -Illegal Embargo  
Rail Line in Summit County, Ohio

Dear Sir:

I am enclosing an original and ten (10) copies of a Complaint alleging that CSX Rail road has illegally engaged in an embargo of certain rail line located in Akron, Summit County, Ohio. Please note that a 3.5 in. diskette is enclosed with this document.

An additional paper copy is enclosed for date stamp and return to our office. I have enclosed a self-addressed, stamped envelope for your convenience.

Also enclosed is a check in the amount of \$6,100.00 made payable to the Surface Transportation Board. If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,

Frank J. Reed, Jr.

FJR/alb

Enclosures

NR 42086

**FILED**  
FEB 12 2004  
SURFACE  
TRANSPORTATION BOARD

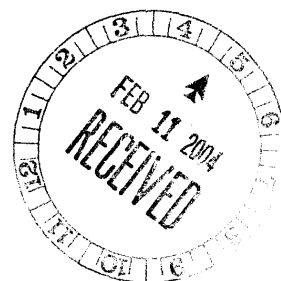
**FEE RECEIVED**  
FEB 12 2004  
SURFACE  
TRANSPORTATION BOARD

Cleveland: 2300 BP Tower ► 200 Public Square ► Cleveland, Ohio 44114-2378 ► Phone: (216) 363-4500 ► Fax: (216) 363-4588

Columbus: 88 East Broad Street ► Suite 900 ► Columbus, Ohio 43215-3506 ► Phone: (614) 223-9300 ► Fax: (614) 223-9330

www.bfca.com

cc: Louis E. Gitomer, Esq.  
Natalie S. Rosenberg, Esq.



**FILED**  
FEB 12 2004  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Washington, D.C. 20423



TERMINAL WAREHOUSE, INC.

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

**FILED**  
FEB 12 2004  
SURFACE  
TRANSPORTATION BOARD

ENTERED  
Office of Proceedings  
FEB 11 2004  
Part of  
Public Record

Docket No. 42086

**FEE RECEIVED**

FEB 12 2004

SURFACE  
TRANSPORTATION BOARD

**COMPLAINT**

Terminal Warehouse, Inc. (hereinafter "Terminal Warehouse"), hereby complains against CSX Transportation, Inc. (hereinafter "CSX") and its statutory agent, CT Corporation System, 1300 E. 9<sup>th</sup> Street, Cleveland, Ohio 44114 as follows:

1. Terminal Warehouse is a corporation organized and existing under the laws of Ohio. Terminal Warehouse operates three facilities in the Akron area. One of the facilities is located at 989 Home Avenue Akron, Summit County, Ohio 44310. The Home Road warehouse facility is located on the line of railroad which includes the line from former Conrail Milepost 11.49 to a point 150 feet from the point of a switch at or near former Conrail post 11.56, known as the Lumber Lead (hereinafter, "the Line" or "the Lumber Lead"). The facility is dependent upon

CSX for shipment of goods and services on this rail line owned and operated by CSX, as this is the only rail line that provides rail access to this facility.

2. CSX is a corporation organized and existing under the laws of Virginia, with its principal offices located at 500 Water Street, Jacksonville, Florida 32292 and its Ohio office located at 2815 Spring Grove Avenue Cincinnati, Ohio 45225.
3. CSX is a common carrier by railroad subject to the jurisdiction of the Surface Transportation Board [formerly the Interstate Commerce Commission] under Chapter 105 of the Interstate Commerce Act, 49 U.S.C. § 10501, *et seq.* As herein pertinent, CSX owns the line of railroad commonly known as the line from former Conrail Milepost 11.49 to a point 150 feet from the point of a switch at or near former Conrail post 11.56, known as the Lumber Lead (hereinafter, "the Line" or "the Lumber Lead"). *A map of the line is found at Attachment A hereto.*
4. On or about February 11, 2002, CSX allowed AT&T to install a cable along the "Lumber Lead" right of way across a railroad trestle which extended over Eastwood Avenue in Akron, Ohio.
5. On or about February 11, 2002, AT &T damaged this rail and/or the rail trestle owned and operated by CSX along the Line.
6. On or about May 24, 2002, CSX caused the rail and the rail trestle to be torn down completely.
7. On or about August 2, 2002, CSX embargoed service from former Conrail Milepost 11.49 to a point 150 feet from the point of a switch at or near former Conrail post 11.56, known as the Lumber Lead. *See Attachment B.*

8. On or about March 26, 2003, CSX filed with the Surface Transportation Board a Notice of Exemption from the normal abandonment procedures pursuant to 49 USC 10502 and 49 CFR Part 1152. The purported basis of the Exemption notice was that: "no local traffic has moved over the line for at least two years, there is no overhead traffic on the line, no formal complaint filed by a user of rail service on the line (or state or local government agency acting on behalf of such user) regarding cessation of service over the line is either pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period."
9. This information was false and misleading because Terminal Warehouse received goods on this line on or about January 6, 2001 and January 20, 2001. In addition, Terminal Warehouse was physically incapable of receiving goods after the line was damaged on February 22, 2002, and after the rail and trestle was removed May 24, 2002. Therefore, the statement that no local traffic has moved over the line for at least two years was false and misleading.
10. CSX did not notify any of its customers or shippers of; (1) the damage to the trestle, (2) the fact that on or about May 24, 2002, CSX removed the trestle and the rail structuring, thereby preventing local traffic from moving across this line; or (3) the embargo. (See affidavit of Bill Hanlon, July 2, 2003). *See Attachment C.*
11. CSX did not notify anyone of these facts before it took any of these actions, nor did CSX disclose these material facts to the Surface Transportation Board in its Notice of Exemption filed March 26, 2003. *Id.*

12. On June 13, 2003, Terminal Warehouse, through their legal counsel, requested CSX immediately restore transportation services to this rail line and immediately provide transportation rail services to Terminal Warehouse. *See Attachment D.*
13. On June 18, 2003, CSX sent a letter indicating its refusal to make the repairs necessary to reinstitute service, instead notifying Terminal Warehouse for the first time that CSX had filed a Notice of Exemption from normal Abandonment procedures pursuant to 49 U.S.C. § 10502. *See Attachment E.*
14. On July 8, 2003, Terminal Warehouse filed a Petition to revoke CSX's Notice of Exemption from Abandonment Procedures based upon false and misleading information, pursuant to 49 CFR 1152.50(d)(3). *See Attachment F.(Docket AB-55 Sub No. 631X).*
15. Despite requests from Complainant and other affected shippers that the embargo be lifted and service restored, CSX has refused to restore service. *See Attachments G, H & I.*
16. CSX was placed on notice by Complainant that their facilities were designed to ship by rail; that they were being damaged by having to use trucks for shipments, rather than rail cars; that they were losing business as a result of not having rail service available; and that they were otherwise incurring additional costs by transloading shipments to other facilities. Specifically, Terminal Warehouse lost business on December 13, 2002 and again on March 19, 2003 since the Home Avenue facility has been without rail services. *See Attachment C.*
17. In addition, CSX was notified that another shipper, B & F Polymers Company, is temporarily storing two rail "hopper" cars on rail siding owned by Terminal

Warehouse. *Id.* The only access to the rail siding owned by Terminal Warehouse is through the Line proposed to be abandoned by CSX. *Id.* If the Line (also known as “the Lumber Lead”) is abandoned, the two rail cars will be permanently isolated. *Id.* Further, if this rail Line is permitted to be abandoned, neither B & F Polymers nor Terminal Warehouse will ever have the ability to move or otherwise use these two hopper cars for anything other than perpetual storage. *Id.*

18. The damage caused by AT & T was not significant. Although the bridge itself was old and in need of general repair, the damage caused by AT & T could have been easily repaired.
19. Now that CSX has completely removed the bridge, CSX’s options are to either rebuild a new bridge or install a “switch” in order to restore service.
20. Based on information and belief, CSX can install a “switch” either north or south of the business. The “switch” would allow trains to either “over-shoot” or “under-shoot” the business and then back up in order to make their deliveries to Terminal Warehouse. The cost to install the switch is approximately \$60,000, and would have taken only a few days necessary to repair the line so as to be able to provide service. *See Attachment J.*
21. CSX was and is both physically and financially able to make such repairs so as to allow safe and necessary train operations to resume over this line.
22. Based on information and belief, the Akron Regional Transit Authority offered substantial economic assistance to CSX in order to effectuate these repairs.
23. CSX either accepted or could have applied for certain financial grants from the State of Ohio Rail Development Commission and/or the United States

Department of Transportation which if received, could have been applied to the repair the "Lumber Lead" line.


24. Based on information and belief, CSX failed to use any funds from the Akron Regional Transit Authority, the Ohio Rail Development Commission, or any other governmental entity to repair or maintain any segment of the "Lumber Lead" line.
25. Instead of applying for or accepting financial assistance in order to make the repairs, on March 26, 2003, CSX filed with the Surface Transportation Board a Notice of Exemption from the normal abandonment procedures pursuant to 49 U.S.C. § 10502 and 49 CFR Part 1152.
26. The Surface Transportation Board has not authorized discontinuance of rail service over the "Lumber Lead" line, and has not yet ruled on Terminal Warehouse's Petition to Revoke the Exemption filed July 8, 2003.
27. By reason of the foregoing facts and circumstances, CSX has failed or refused to provide transportation on the reasonable request of Complainant in violation of 49 U.S.C. § 11101(a). Such violation is continuing.
28. As a result of CSX's failure or refusal to provide transportation to Complainant as requested, Complainants have already sustained monetary damages. Such damages are continuing to be incurred by Complainants as a result of CSX's failure or refusal to provide such transportation. Pursuant to 49 U.S.C. § 11705(b)(2), CSX is liable for such damages caused by their joint and several violation of 49 U.S.C. § 11101(a).

WHEREFORE, the Surface Transportation Board is respectfully requested to immediately investigate this matter pursuant to 49 U.S.C. § 11701 and find that:



- (1) CSX has violated 49 U.S.C. § 11101(a) by failing or refusing to provide transportation reasonably requested by Complainant;
- (2) to find that such violation is continuing during the course of this proceeding, and will continue until rail service is restored;
- (3) to require CSX to pay to Complainant as damages for such past and continuing violations such sum as may be proved by the evidence;
- (4) to award Complainant appropriate interest on such damage sums; and
- (5) to award Complainant reasonable attorney fees and costs of this action;
- (6) in the alternative, order CSX to resume rail service and pay Terminal Warehouse damages from February 11, 2002 until the rail line is restored; and
- (7) to order such additional relief as may be appropriate.

Respectfully submitted,



Eric Larson Zalud (Ohio Atty. Reg. No. 0038959)  
Frank J. Reed, Jr. (Ohio Atty. Reg. No. 0055234)  
BENESCH, FRIEDLANDER COPLAN &  
ARONOFF, LLP  
88 E. Broad Street, Suite 900  
Columbus, Ohio 43215  
(614) 223-9300/(614) 223-9330 (Fax) (Columbus)  
(216) 363-4178/(216) 363-4588(Fax) (Cleveland)

Counsel for Terminal Warehouse, Inc.

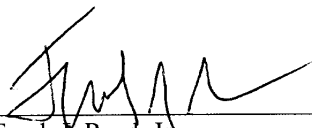
**CERTIFICATE OF SERVICE**

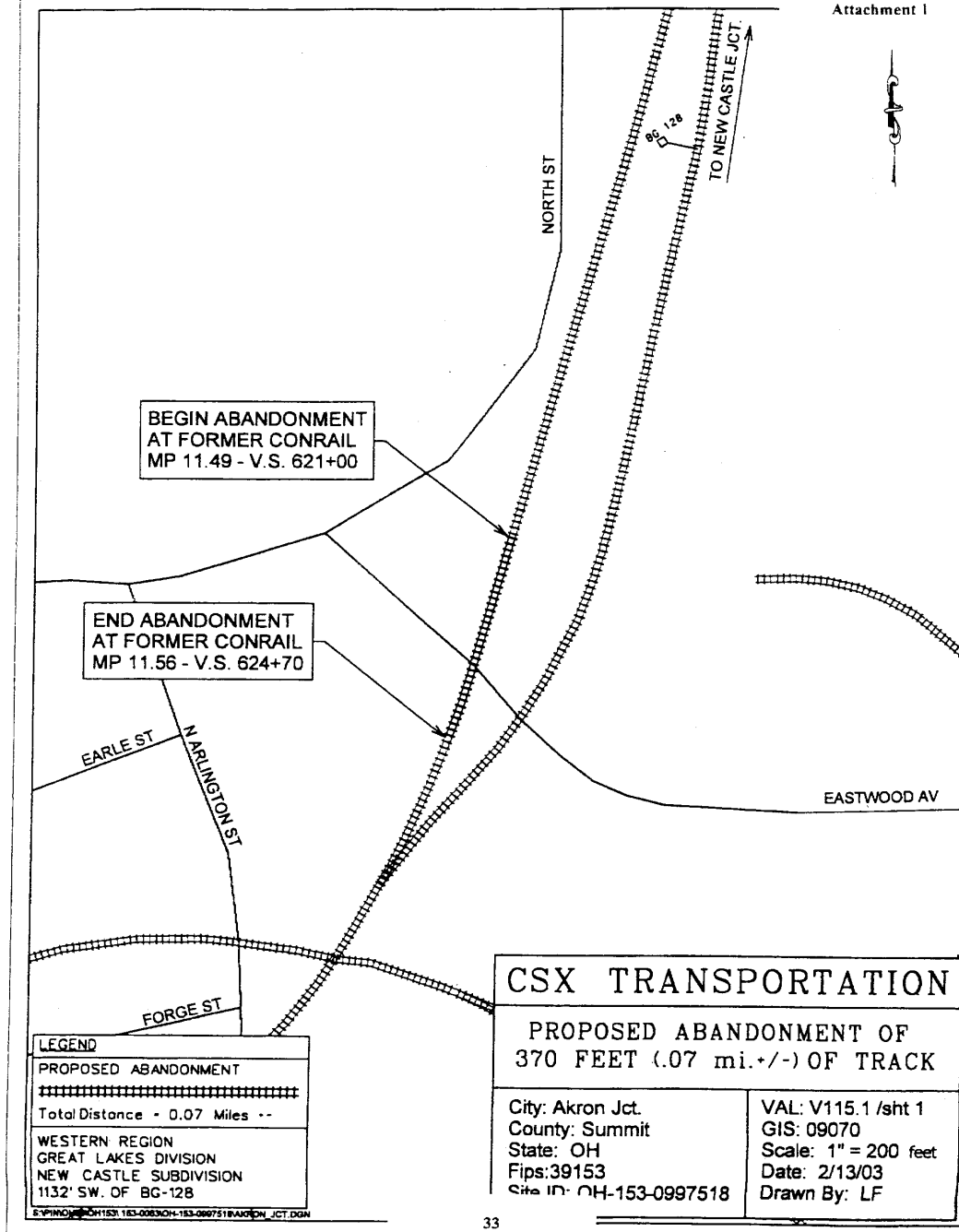
The undersigned hereby certifies that a copy of the foregoing was served by ordinary U.S. mail, postage prepaid, this 10<sup>th</sup> day of February 2004, upon the following:

Louis E. Gitomer  
Ball Janik LLP  
1455 F Street, N.W., Suite 225  
Washington, D.C. 20005

Natalie S. Rosenberg  
CSX Transportation  
Law Department  
500 Water Street (J150)  
Jacksonville, FL 32202

Attorneys for CSX

  
\_\_\_\_\_  
Frank J. Reed, Jr.



[\[Submit Embargo Amendment\]](#) [\[Cancel Embargo\]](#)

## **Association of American Railroads**

**Embargo Notices for: 08/02/2002****Consecutive Sheet:083****Roadmark:**

CSXT

**Railroad:**

CSX TRANSPORTATION

**Embargo Number:**

4-02

**Amendment Number:****Current Status:**

Cancelled

**Embargo Effective Date:**

08/02/2002 00:00

**Commodity:**

All Traffic

**Destination Gateway or Territory:**

To or from the following customer at Akron Junction, OH (FSAC 71428)

**Consigned or Reconsigned To, or Intended For:**

Terminal Warehouse

**Cause:**

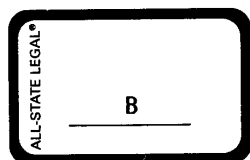
Bridge damaged by fiber optics contractor


**Amend:****Exception:**

None

**Note:**

This embargo issued on the authority of J.J. Carroll





John Carroll  
Sr. Asst. VP - Business Services  
Association of American Railroads

[\[Back\]](#)

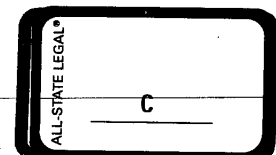
AFFIDAVIT

State of Ohio

Summit County, SS:

Now comes William K. Hanlon, President of Terminal Warehouse, Inc., a public/contract storage and distribution company, who after being duly sworn according to law, deposes and states the following from his personal information and belief.

1. I, William K. Hanlon, and President of Terminal Warehouse, Inc. Terminal Warehouse, Inc. (hereinafter Terminal Warehouse) is a public/contract storage and distribution company located in Akron, Summit County, Ohio.
2. Terminal Warehouse currently operates three facilities in the Akron, Ohio area. The first facility occupies approximately 450,000 square feet and is located at 1779 Marvo Drive, Akron, Ohio 44306. The second facility occupies approximately 80,000 square feet and is located at 1075 Jenkins Boulevard, Akron, Ohio. The third facility is located at 989 Home Avenue, Akron, Ohio 44310, and occupies approximately 137,000 square feet. Until the events described more fully herein, the Marvo Drive and Home Avenue facilities have enjoyed access to one or more railroad lines.
3. I have been an employee of Terminal Warehouse since February 1, 1993, the last three and half years having served as President of the company. Currently, the company has approximately 69 employees.
4. Terminal Warehouse has operated the Home Avenue facility since approximately 1989. Company records indicate the facility has received regular railroad traffic for several years, at least since the mid-1960's.
5. Shippers typically transport goods or raw materials to one of our facilities by truck or by rail for storage and distribution.
6. One of our company's customers is NYCO, Inc. (NYCO) 205 9<sup>th</sup> Avenue SE, Suite 500, Calgary, Alberta Canada T2G 0R4. NYCO manufactures a fiber, powder-like raw material similar to clay or talc known as Calcium Silicate.
7. NYCO usually packages this material in one of two different methods. One method is that the material is filled into 50 lb. bags, the bags are assembled onto wood pallets, and the pallets are shrunk-wrapped with plastic. Another method is that the material is filled into 1000 kilogram industrial "supersacks." Under either method of packaging, the material is then loaded into a rail box car and transported to Akron, Ohio for storage and distribution to NYCO's customers.



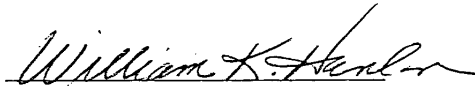
8. Transportation by rail is cheaper and more efficient because a rail car can hold two and one-half times the capacity of material as one regular truck load of material.
  9. During my years at Terminal Warehouse, NYCO has transported raw materials to our company's Home Avenue facility on several occasions.
  10. Attached and labeled as Exhibit A to this affidavit is a warehouse receipt. This warehouse receipt is a true and accurate copy of the original receipt, held at our offices, and kept in the ordinary course of our business. Exhibit A indicates that NYCO shipped 15 separate lots of raw materials by rail. This shipment included 2400 bags of material. Each bag weighed 50 lbs. This shipment originated from NYCO's facility located in Hermosillo, Conora Mexico, passed through the Akron CSX Rail yard, and terminated at our facility. The rail carrier was CSX Transportation, Inc. (hereinafter CSX).
  11. Based upon my own personal knowledge, recollection, and review of company records, I know that this shipment of raw material was received by box rail car on or about December 30, 2000.
  12. Attached and labeled as Exhibit B to this affidavit is a second warehouse receipt. This warehouse receipt is a true and accurate copy of the original receipt, held at our offices, and kept in the ordinary course of our business. Exhibit B indicates that NYCO shipped 19 separate lots of raw materials by rail. This shipment included 2400 bags of material. Each bag weighed 50 lbs. This shipment originated from NYCO's facility located in Hermosillo, Conora Mexico, passed through the Akron CSX Rail yard, and terminated at our facility. The rail carrier was CSX.
  13. Based upon my own personal knowledge, recollection, and review of company records, I know that this shipment of raw material was received by box rail car on or about January 6, 2001.
  14. Attached and labeled as Exhibit C to this affidavit is a second warehouse receipt. This warehouse receipt is a true and accurate copy of the original receipt, held at our offices, and kept in the ordinary course of our business. Exhibit C indicates that NYCO shipped one lot of raw materials by rail. This shipment consisted of 52 "supersacks." Each supersack weighed 1000 kilograms. This shipment originated from NYCO's facility located in Hermosillo, Conora Mexico, passed through the Akron CSX Rail yard, and terminated at our facility. The rail carrier was CSX.
  15. Based upon my own personal knowledge, recollection, and review of company records, I know that this shipment of raw material was received by box rail car on or about January 20, 2001.
  16. In approximately September, 2001, I had a telephone conversation with Jim Scott who is the yardmaster for CSX Transportation. Mr. Scott's office is located at 479 N. Arlington Street, Akron, Ohio 44305.
-

17. Mr. Scott informed me that earlier in the summer, AT & T had been installing a cable along the rail line right-of-way and damaged the rail trestle owned and operated by CSX. The rail trestle passes over Eastwood Avenue near the intersection of Eastwood and Home Avenues in Akron, Ohio.
  18. Mr. Scott informed me that CSX had declared this rail line corridor unsafe, due to the damage, and would likely repair the rail line.
  19. At no time did I ever receive anything in writing from Mr. Scott or CSX notifying me of this incident or CSX's determination that the line was unsafe for rail traffic.
  20. My normal office is situated at the facility located on Marvo Drive, which is approximately 9 miles from the Home Avenue facility.
  21. Sometime in late July or early August, 2002, one of my employees at the Home Avenue facility notified me that the rail trestle and a portion of the railroad lines leading to our Home Avenue facility along Eastwood had been completely removed. The same day I drove my vehicle past the facility to confirm this fact.
  22. At no time did CSX or Mr. Scott notify me either verbally or in writing of this action.
  23. When I contacted Mr. Scott, Mr. Scott said that the City of Akron had caused the rail line and railroad trestle to be removed.
  24. When I contacted officials from the City of Akron, Ohio, the City denied that it took any steps to remove this rail structure, nor took any steps to allow the structure to be removed.
  25. On June 23, 2003, I learned from my attorneys that on March 25, 2003, after the railroad line and railroad trestle had already been removed during the summer of 2002, CSX had filed a Notice of Exemption to abandon this rail line.
  26. As is more fully explained herein, Terminal Warehouse has been harmed and will continue to suffer harm if this rail abandonment is not revoked, and rail service is not eventually restored.
  27. I have been informed that the line of railroad is more fully described as, "the line from former Conrail Milepost 11.49 to a point 150 feet from the point of switch at or near former Conrail Milepost 11.56, known as the Lumber Lead, a distance of approximately 0.097 of a mile and which traverses through United States Postal Service Zip Code 44305 in Summit County, Ohio." This rail line is the only rail corridor that services and allows rail access to the Home Avenue facility.
  28. Upon learning that CSX had declared the railroad trestle unsafe, Terminal Warehouse has refused contracts and denied shippers the opportunity to transport goods or raw materials to our Home Avenue facility by rail.
-

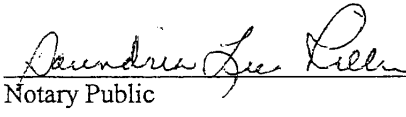


29. Attached to this affidavit and labeled Exhibit "D," is a document which indicates that on December 13, 2002, a shipper, A. Schulman, Inc., asked our company for a quote to deliver goods by rail to our Home Avenue facility for storage and distribution. I informed the customer that our Home Avenue facility was temporarily without rail service. As a result, the customer did not hire our company.
30. Attached to this affidavit and labeled Exhibit "E," is a document which indicates that on March 19, 2003, Laughlin Logistics, Inc. asked our company for a quote to deliver goods by rail to our Home Avenue facility for storage and distribution. I contacted Jim Laughlin by telephone and informed the customer that our Home Avenue facility was temporarily without rail service. As a result, the customer did not hire our company.
31. Terminal Warehouse has lost income revenue, and will continue to lose revenue by the proposed abandonment of this rail corridor and the resulting loss of rail service.
32. In approximately November, 1999, the B & F Polymers Company entered into a monthly contract with Terminal Warehouse. The contract called for the temporary storage of two rail "hopper" cars, owned by B & F Polymers, to be placed on our rail siding. The rail siding is adjacent to the East side of our Home Avenue facility, and runs parallel to the rail spur extending from the Eastwood Avenue trestle. If the rail spur is permitted to be abandoned, neither B & F Polymers nor Terminal Warehouse will ever have the ability to move or otherwise use these two hopper cars for anything other than perpetual storage.

Further, Affiant sayeth naught.

  
William K. Hanlon, President  
Terminal Warehouse, Inc.

Sworn to and subscribed before me, a notary public, this 2 day of July, 2003.

  
Notary Public

Notary Public  
My Commission Expires Aug. 9, 2005

# **ERMINAL WAREHOUSE, INC.**

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 989 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## **WAREHOUSE RECEIPT**

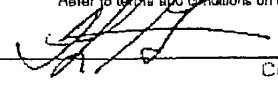
FOR THE ACCOUNT OF: NYCO  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 RODRIQUEZ 181 565 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP. 83005

GOODS RECEIVED FROM  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXIC  
 VIA CSX  
 CAR/CONT.

INVOICE
109652
INVOICE DATE
01.01.01
RECIFT NO
109650

QTY.	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE		HANDLING	
				RATE	AMOUNT	RATE	AMOUNT
40	NYAD M400 980709C01-50 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M400 980823C01-25 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M400 M990107C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
560	NYAD M400 M990420C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	56.00	.13	72.80

INSURANCE: Goods are not insured by warehouseman.  
 LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER:  Continued on Page 2

ORIGINAL

STORAGE
HANDLING
OTHER
TOTAL

# **ERMINAL WAREHOUSE, INC.**

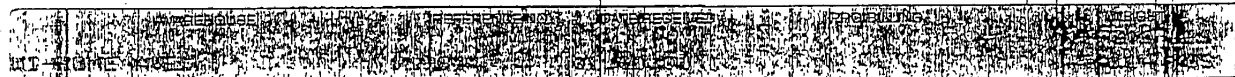
O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 989 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## **WAREHOUSE RECEIPT**

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 2 MAIL BOXES ETC. BLVD.  
 RODRIQUEZ 181 565 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 NYCO  
 2 MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXIC  
 VIA CSX  
 CAR/CONT.

INVOICE
109652
INVOICE DATE
01.01.01
RECEIPT NO.
109650



QTY.	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE		HANDLING	
				RATE	AMOUNT	RATE	AMOUNT
38	NYAD M400 M990420C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	3.80	.13	4.94
80	NYAD M400 M990421C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	8.00	.13	10.40
40	NYAD M400 M990423C03 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M400 M990530C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20

INSURANCE: Goods are not insured by warehouseman.  
 LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: \_\_\_\_\_  
 Continued on Page 3

ORIGINAL

STORAGE			
HANDLING			
OTHER			
TOTAL			

# ERMINAL WAREHOUSE, INC.

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 989 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## WAREHOUSE RECEIPT

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 2 MAIL BOXES ETC. BLVD.  
 RODRIQUEZ 181 565 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 NYCO  
 2 MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXIC

VIA: CSX  
 CAR/CONT.

INVOICE
109652
INVOICE DATE
01.01.01
HLCDIPT NO
109650

ITEM	QUANTITY	UNIT	DESCRIPTION	PER	STORAGE	HANDLING
------	----------	------	-------------	-----	---------	----------

QTY.	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE		HANDLING	
				RATE	AMOUNT	RATE	AMOUNT
36	NYAD M400 M990530C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	3.60	.13	4.68
40	NYAD M400 M990601C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
600	NYAD M400 M990608C02 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	60.00	.13	78.00
36	NYAD M400 M990608C02 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	3.60	.13	4.68

INSURANCE: Goods are not insured by warehouseman.

LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: \_\_\_\_\_

Continued on Page 4

ORIGINAL

STORAGE	HANDLING	OTHER	TOTAL

# **ERMINAL WAREHOUSE, INC.**

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 989 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9378 • (330) 375-9378

## **WAREHOUSE RECEIPT**

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 RODRIGUEZ 181 565 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXICO  
 VIA: CSX  
 CAR/CONT.

INVOICE
109652
INVOICE DATE
01-01-01
RECEIPT NO.
109650

DATE	TIME	BY	INITIALS	REFERENCE	REMARKS
------	------	----	----------	-----------	---------

QTY.	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE		HANDLING	
				RATE	AMOUNT	RATE	AMOUNT
480	M1250 WOLLASTOC M001110E01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	48.00	.13	62.40
38	M1250 WOLLASTOC M001110E01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	3.80	.13	4.94
278	M1250 WOLLASTOC M001110E01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	27.80	.13	36.14
7	TERMINAL PALLETS		EA			7.00	49.00
7	STRETCHWRAP		EA			5.00	35.00
6	EXTRA LABOR W F/L		HR			37.50	225.00

INSURANCE: Goods are not insured by warehouseman. QTY TOTAL: 2386

LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: \_\_\_\_\_

Terms: Charges accrue to a future invoice

ORIGINAL

STORAGE	238.60
HANDLING	518.18
OTHER	319.00
TOTAL	1075.78

# **ERMINAL WAREHOUSE, INC.**

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 989 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## **WAREHOUSE RECEIPT**

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 2 MAIL BOXES ETC. BLVD.  
 RODRIQUEZ 181 565 CDL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 MINERA NYCO S A DE C V  
 CARRETERA MINA PILARES K  
 HERMOSILLO, SONORA MX

VIA CSX  
 CAR/CONT.

INVOICE
109851
INVOICE DATE
01.01.01
RECEIPT NO.
109849

QTY.	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE	HANDLING		
				RATE	AMOUNT	RATE	AMOUNT

2	NYAD M400 M990420CDAM Identity: UNSHIP	BAGS ON PALLETS	EA	.10	0.20	.13	0.26
4	NYAD M400 M990530DAM Identity: UNSHIP	BAGS ON PALLETS	EA	.10	0.40	.13	0.52
4	NYAD M400 M990608DAM Identity: UNSHIPABLE	BAGS ON PALLETS	EA	.10	0.40	.13	0.52
4	M1250 WOLLASTOC M001110DAM Identity: UNSHIP	BAGS ON PALLETS	EA	.10	0.40	.13	0.52

\* THIS INVOICE NOTES DAMAGED  
 PRODUCT ONLY - UNSHIPABLE

INSURANCE: Goods are not insured by warehouse

LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: 

Terms: Charges accrue to a future invoice

ORIGINAL

14	STORAGE	1.40
	HANDLING	1.82
	OTHER	0.00
	TOTAL	3.22

# **ERMINAL WAREHOUSE, INC.**

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 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## **WAREHOUSE RECEIPT**

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 RODRIQUEZ 181 565 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXIC  
 VIA: CSX  
 CAR/CONT: GUSR769109

INVOICE
109601
INVOICE DATE
01.06.01
RECEIPT NO.
109599

QTY.	ITEM/LOT CODE	DESCRIPTION	PER	STORAGE		HANDLING	
				RATE	AMOUNT	RATE	AMOUNT
40	NYAD M325 980404C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M325 980415C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M325 980507C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M325 980810C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20

INSURANCE: Goods are not insured by warehouseman.

LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: 

Continued on Page 2

ORIGINAL

STORAGE			
HANDLING			
OTHER			
TOTAL			

# **ERMINAL WAREHOUSE, INC.**

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 989 Homs Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## **WAREHOUSE RECEIPT**

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 RODRIQUEZ 181 565 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXIC  
 VIA:CSX  
 CAR/CONT.GVSR739109

INVOICE
109601
INVOICE DATE
01.06.01
RECEIPT NO
109599

QTY.	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE		HANDLING	
				RATE	AMOUNT	RATE	AMOUNT
40	NYAD M325 M990412C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M325 000915C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
80	NYAD M325 M990331C02 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	8.00	.13	10.40
120	NYAD M325 980818C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	12.00	.13	15.60

INSURANCE: Goods are not insured by warehouseman.  
 LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: \_\_\_\_\_ Continued on Page 3

ORIGINAL

STORAGE
HANDLING
OTHER
TOTAL



# ERMINAL WAREHOUSE, INC.

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-8132  
 O 989 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## WAREHOUSE RECEIPT

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 RODRIGUEZ 181 565 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXICO

VIA: CSX  
 CAR/CONT. GVSF769109

INVOICE
109601
INVOICE DATE
01.06.01
RECEIPT NO.
109599

NYCO WAREHOUSE IN THE CITY OF AKRON, OHIO RECEIVED FROM NYCO THE FOLLOWING GOODS:

QTY.	ITEM/LOT CODE	DESCRIPTION	PER	STORAGE		HANDLING	
				RATE	AMOUNT	RATE	AMOUNT
1	NYAD M325 980416C01DAM Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	0.10	.13	0.13
39	NYAD M325 980416C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	3.90	.13	5.07
320	NYAD M325 980416C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	32.00	.13	41.60
1	RECEIVED 1 BAG DAMAGED UNSHIPPABLE LOT # 980416C01 EXTRA LABOR/NO F/L		HR			29.50	29.50
1	STRETCHWRAP		EA			5.00	5.00

INSURANCE: Goods are not insured by warehouseman.  
 LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: \_\_\_\_\_ Continued on Page 4

ORIGINAL

STORAGE	AMOUNT
HANDLING	AMOUNT
OTHER	AMOUNT
TOTAL	AMOUNT

# **ERMINAL WAREHOUSE, INC.**

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 989 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## **WAREHOUSE RECEIPT**

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 2 MAIL BOXES ETC. BLVD.  
 RODRIQUEZ 181 565 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 NYCO  
 2 MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXICO

VIA: CSX  
 CAR/CONT. GUSR769109

INVOICE
109601
INVOICE DATE
01.06.01
RECEIPT NO.
109599

QUANTITY	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE	HANDLING
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QUANTITY	ITEM / LOT CODE	DESCRIPTION	PER	RATE	AMOUNT	RATE	AMOUNT
40	NYAD M400 M990423C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M400 M990610C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M400 M990610C02 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20
40	NYAD M400 M990421C02 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	4.00	.13	5.20

INSURANCE: Goods are not insured by warehousemen.  
 LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: \_\_\_\_\_ Continued on Page 5

ORIGINAL

STORAGE
HANDLING
TOTAL

# **ERMINAL WAREHOUSE, INC.**

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 989 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## **WAREHOUSE RECEIPT**

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 RODRIGUEZ 181 565 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXIC  
 VIA: CSX  
 CAR/CONT: GVSF769109

INVOICE
109601
INVOICE DATE
01.06.01
HLCHPT NO
109599

QTY.	ITEM/LOT CODE	DESCRIPTION	PER	STORAGE	HANDLING
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				RATE	AMOUNT	RATE	AMOUNT
90	NYAD M400 M990421C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	8.00	.13	10.40
160	NYAD M400 M990530C02 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	16.00	.13	20.80
400	NYAD M400 M990420C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	40.00	.13	52.00
80	NYAD M200 M001103C01 Identity: 50# BAGS	BAGS ON PALLETS	EA	.10	8.00	.13	10.40

INSURANCE: Goods are not insured by warehouseman.

LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: \_\_\_\_\_

Continued on Page 6

ORIGINAL

STORAGE
HANDLING
OTHER
TOTAL

# **ERMINAL WAREHOUSE, INC.**

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 989 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## **WAREHOUSE RECEIPT**

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 RODRIQUEZ 181 545 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 HERMOSILLO, SONORA MEXIC

VIA: CSX  
 CAR/CONT: GVSF769109

INVOICE
109601
INVOICE DATE
01.06.01
RECEIPT NO.
109599

QTY	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE	HANDLING
-----	-----------------	-------------	-----	---------	----------

QTY	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE		HANDLING	
				RATE	AMOUNT	RATE	AMOUNT
720	NYAD M200 M001115C01 Identity: 50# BAGS	BAGS ON PALLET	EA	.10	72.00	.13	93.60

INSURANCE: Goods are not insured by warehouseman

LIABILITY: This contract contains a limitation of liability provision.  
 Refer to terms and conditions on reverse side.

PER: \_\_\_\_\_

Terms: Charges accrue to a future invoice

ORIGINAL

2400	STORAGE	240.00
	HANDLING	93.60
	OTHER	0.00
	TOTAL	333.60

# **ERMINAL WAREHOUSE, INC.**

O 1779 Marvo Drive, Akron, Ohio 44306 • (330) 773-8207 • Fax: (330) 773-6132  
 O 988 Home Ave., Akron, Ohio 44310 • (330) 375-9376 • Fax: (330) 375-9378  
 O 850 N. Main St., Kent, Ohio 44240 • (330) 375-9376 • (330) 375-9378

## **WAREHOUSE RECEIPT**

FOR THE ACCOUNT OF: NYCO  
 NYCO  
 % MAIL BOXES ETC. BLVD.  
 RODRIQUEZ 181 545 COL CENTRO  
 HERMOSILLO, SONORA MEXICO  
 CP 83005

GOODS RECEIVED FROM  
 MINERA NYCO S A DE C V  
 CARRETERA MINA PILARES K  
 HERMOSILLO, SONORA MX

VIA:CSX  
 CAR/CONT.SRN3523

INVOICE
109850
INVOICE DATE
01.20.01
RECEIPT NO
109848



QTY.	ITEM / LOT CODE	DESCRIPTION	PER	STORAGE		HANDLING	
				RATE	AMOUNT	RATE	AMOUNT
	NYAD M200 (SUPE 2205# SUPERSACKS)						
	M001125A01						
52	Identity: 1000KG BAGS		EA	3.76	97.76	5.00	260.00
1	DISPOSAL OF WOOD OFF RAILCAR		EA			75.00	75.00
4	EXTRA LABOR/NO F/L		HR			29.50	108.25
1	FAX		EA			1.00	1.00

INSURANCE: Goods are not insured by warehouseman. QTY TOTAL: 52

LIABILITY: This contract contains a limitation of liability provision. Refer to terms and conditions on reverse side.

PER: 

Terms: Charges accrue to a future invoice

ORIGINAL

STORAGE	97.76
HANDLING	260.00
OTHER	179.25
TOTAL	537.01

From: "Bill Hanlon" <whanlon@terminalwhse.com>  
To: <becky\_shilinski@aschulman.com>  
Sent: Monday, December 16, 2002 4:38 PM  
Subject: Re: TERMINAL WAREHOUSE

> Right now we can't store any cars. The trestle over Eastwood was  
> removed after AT&T damaged the abutments. That action cut-off the  
> rail service at Home Ave. The Metro Regional Transit Authority is  
> trying to buy the line from the CSX and we are discussing the  
> reconnection of rail service from  
the  
> north. Even if we work that out, it will be quite some time before  
> the connection is made. My guess is at least 1 year. The Marvo spur  
> is not suitable for the storage of cars. While handling a transfer,  
> the docks to Bldg #1 will be blocked which will not work. If I  
> recall, you thought  
the  
> extra cars could be switched over to the plant siding. Is that still  
> feasible?

>  
>  
> ----- Original Message -----  
> From: <becky\_shilinski@aschulman.com>  
> To: <whanlon@terminalwhse.com>  
> Sent: Friday, December 13, 2002 2:33 PM  
> Subject: TERMINAL WAREHOUSE

>  
>  
> > BILL:  
> >  
> > Just a note to advise that I have been unable to talk with John  
> > Myles regarding the proposal from Terminal Warehouse. John has been  
> > out of  
the  
> > office quite a bit and his schedule is pretty well booked for the  
> > time  
he  
> > will be here this month (he and I will only be here two of the same  
> > days for the remainder of the year).  
> >  
> > I will let you know what he thinks as soon as I can talk to him.  
> >  
> > One question, we currently have 6 rail cars in Mogadore. Can cars  
> > be handled by one of your locations (Marvo - Home) for Bulk  
> > transfers?  
> >  
> > If I don't get to talk to you, I hope you and your family have a  
> > Very  
> Merry  
> > Christmas and a the best New Year ever.  
> >  
> > Becky

> >  
> >  
> >  
> > The contents of this e-mail and its attachments is confidential,  
> > may be legally privileged and is for the use of the intended  
> > recipient only. Access, disclosure, copying, distribution or  
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> >  
> >  
>

From: Jim Laughlin  
To: Bill Hanlon  
Sent: Wednesday, March 19, 2003 6:12 PM  
Subject: Northeast Packaging Opportunity

Bill:

Attached is the modified Northeast Packaging Opportunity description that we discussed.

Best regards, Jim Laughlin



LAUGHLIN LOGISTICS, INC.

CHEMICALS AND PLASTICS OPPORTUNITY

NORTHEAST REGION

MARCH 2003

Overview

A major chemical manufacturer has asked Laughlin Logistics, Inc. to locate a third party provider to perform transloading, warehousing, and packaging services in the Northeast.

Specific Requirements

- Rail and truck to packaging transfers are involved for plastics. Hopper cars & hopper trucks.
- Warehousing for storage and handling of plastics is required.
- Packaging of plastics in boxes on pallets is the primary requirement.
- Weight is 1500 LB per box.
- No storage and handling of liquid chemicals is required.
- Volume is 30,000,000 pounds per year to be received, packaged, and shipped.
- Each hopper car weighs 192 KLB.
- One product is involved --- a nonhazardous plastics (probably Polystyrene).
- Inventory in warehouse will range between 5.0 MLB and 7.5 MLB.
- Stacking height for boxes is two (2) high.
- Facility location must be in New Jersey, New York, Ohio, or Pennsylvania.

Pricing Proposal

Please submit a proposed range of storage, handling, packaging, and transloading prices with accessorial charges to:

Laughlin Logistics, Inc.  
88 East Main Street  
Mendham, NJ 07945

E-mail: [jim@laughlinlogistics.com](mailto:jim@laughlinlogistics.com)  
Phone: 973-543-6601

---



**BENESCH**  
Friedlander Coplan  
& Aronoff LLP  
ATTORNEYS at LAW

Frank J. Reed, Jr.  
Writer's Direct Dial: (614) 233-9304  
Writer's Email: [freed@bfca.com](mailto:freed@bfca.com)

June 13, 2003

**VIA TELECOPY AND FEDEX**

Heidi VanHorn-Bash  
Director, Asset Management  
CSX Transportation  
500 Water Street, J200  
Jacksonville, Florida 32202

***Re: Unlawful Embargo of Rail Line Located in Akron, Summit County, Ohio***

Dear Ms. VanHorn-Bash:

Pleased be advised that the undersigned and the law firm of Benesch Friedlander Coplan & Aronoff, LLP represent Terminal Warehouse, Inc. located in Akron, Ohio.

In approximately late 2001 AT&T damaged the railroad trestle along Eastwood Avenue. At that time, no one from the CSX notified Terminal Warehouse of this incident or the damage to the trestle. Although CSX Yardmaster Jim Scott *did* eventually notify our client of this damage, this verbal notice did not occur until at least one month after the damage occurred. At the time, Mr. Scott indicated that CSX would likely make temporary repairs to the track, to facilitate removal of the B&F Polymer railcars.

In fact, it has come to our attention that shortly after this damage occurred, CSX embargoed this portion of the rail line. This action isolated the two railcars owned by B&F Polymers that were temporarily situated on this line, as well as prevented any future access by any other railcars.

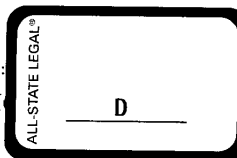
In approximately September, 2002, Terminal Warehouse learned that, contrary to Mr. Scott's assertion that CSX would make temporary repairs to the track, CSX either removed the trestle completely, or allowed it to be removed. Without the use of this track, the B&F railcars cannot be moved by rail. Moreover, no other railcars can access this area. At no time did either CSX or Yardmaster Scott inform Terminal Warehouse that CSX was going to be removing this trestle.

We believe that CSX engaged in an unlawful and unreasonable embargo, and commenced an unlawful abandonment of a railroad line, in violation of the 49 U.S.C. 11011. In a letter dated

Cleveland: 2300 BP Tower ► 200 Public Square ► Cleveland, Ohio 44114-2378 ► Phone: (216) 363-4500 ► Fax:

Columbus: 88 East Broad Street ► Suite 900 ► Columbus, Ohio 43215-3506 ► Phone: (614) 223-9300 ► Fax: (

[www.bfca.com](http://www.bfca.com)



Heidi VanHorn-Bash  
June 13, 2003  
Page 2

February 11, 2003, addressed to B & F Polymers, Inc., a copy of which was sent to Terminal Warehouse, you indicated that: "CSXT also filed a public notice of embargo on the line on August 2, 2002." Terminal Warehouse did not receive any notice that CSX intended to embargo this line. Likewise, our review of filings with the Surface Transportation Board ("STB") revealed that no such notice was provided to the STB. Please provide documentation to support the assertion that appropriate public notice was given by CSX.

This letter also serves to present a demand that CSX immediately restore this rail line to service. In the alternative, we demand that CSX pay Terminal Warehouse the damages which Terminal Warehouse has suffered, and will continue to suffer, in the form of lost rents and revenue, due to the elimination of this rail line. *See, e.g., GS Roofing Products Co., Inc. v. Surface Transportation Board*, 143 F.3d 387 (1998) (railroad's embargo of branch line after it was damaged in storm was unreasonable, supporting shipper's actions for damages, where railroad could have made minor interim repairs that would have allowed line to operate as it had before the storm; cost of resuming service on branch line at pre-embargo levels rather than expense of rehabilitating line to Class I standards was proper standard for assessing cost of repair when assessing reasonableness of railroad's embargo); *GS Roofing Products Co., Inc. v. Surface Transportation Board* (2001), 262 F.3d 767, 777 (shipper met burden of showing that it would have earned profits on contract it was forced to cancel because of rail carrier's unreasonable embargo, and thus was entitled to recover lost profits). The cost of removal of the cars now would be significant, since they would have to be essentially "cut up" and sold as scrap. Also, the property value and commensurate resale value of a commercial warehouse without rail access is *significantly* lower than one with rail access. Terminal Warehouse is entitled to recompense for those two damage components.

If we do not hear from you or your counsel on or before June 30, 2003, our client has authorized us to pursue all legal options that are available to it. This includes seeking relief by filing a complaint against CSX with the STB and before the United States District Court. We look forward to your prompt reply.

Very truly yours,

BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP



Frank J. Reed, Jr.

FJR:alb

cc: Louis A. Jannazo,  
Ohio Rail Development Commission

Heidi VanHorn-Bash  
June 13, 2003  
Page 3

bcc: Bill Hanlon  
Eric Zalud  
Docket

JUN 20 2003

BALL JANIK LLP

A T T O R N E Y S

1455 F STREET, NW, SUITE 225  
WASHINGTON, D.C. 20005

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TELEPHONE 202-638-3307

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LOUIS E. GITOMER  
OF COUNSEL  
(202) 466-6532

lgitomer@dc.bjllp.com

June 18, 2003

Frank J. Reed, Jr., Esq.  
Benesch, Friedlander, Coplan & Aronoff LLP  
88 East Broad Street  
Suite 900  
Columbus, OH 43215-3506

RE: Docket No. AB-55 (Sub-No. 631X), *CSX Transportation, Inc. —Abandonment  
Exemption—in Summit County, OH*

Dear Mr. Reed:

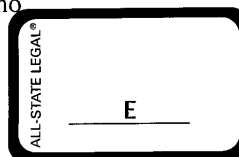
Ms. VanHorn-Bash has asked me to respond to your letter of June 13, 2003.

Contrary to the claims in your letter, CSX Transportation, Inc. ("CSXT") has at all times complied with its common carrier obligation concerning its 0.07-mile rail line known as the Lumber Lead between former Conrail mileposts 11.49 and 11.56 in Summit County, OH (the "Line"). A review of the facts in the two cases you cite would clearly show you that your client Terminal Warehouse, Inc. has no valid claim against CSXT.

After the damage caused by a third party made the bridge unusable, CSXT placed a proper embargo on the bridge on August 2, 2002, in accordance with the rules of the Association of American Railroads.

CSXT followed the regulations of the Surface Transportation Board (the "STB") at 49 C.F.R. § 1152.50 before and when it filed a Notice of Exemption on March 26, 2003, under the above-referenced docket number. In filing the Notice of Exemption, CSXT certified that no local traffic had used the Line since March 10, 2001, well before the bridge was damaged. Such regulations require publication of a notice in a local newspaper. CSXT published just such a notice in The Akron Beacon Journal on March 14, 2003. The STB issued a notice on April 15, 2003 indicating that the abandonment would be effective on May 15, 2003 (copy enclosed). CSXT consummated the abandonment on May 23, 2003, and so notified the STB in a letter of same date received by the STB on May 27, 2003 (copy enclosed). Once abandonment has been consummated, STB jurisdiction over the line of railroad ends.

As Terminal Warehouse, Inc. has not made a reasonable request, much less any request, for service from CSXT since at least March 10, 2001, CSXT has concluded that it had no



BALL JANIK LLP

Frank J. Reed, Jr., Esq.

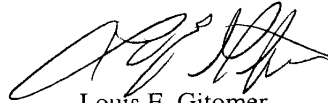
June 18, 2003

Page 2

obligation to serve Terminal Warehouse, has no liability to Terminal Warehouse, and rejects any claim made by Terminal Warehouse.

If you have any questions, please contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "L. Gitomer", written over a horizontal line.

Louis E. Gitomer  
Attorney for CSX Transportation, Inc.

Enclosures

Cc: Ms. Rosenberg  
Ms. VanHorn-Bash

33487

SERVICE DATE - APRIL 15, 2003

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-55 (Sub-No. 631X)]

CSX Transportation, Inc.—Abandonment Exemption—in Summit County, OH

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a line of railroad, known as the Lumber Lead, extending from former Conrail milepost 11.49 to a point at or near former Conrail milepost 11.56, a distance of approximately 0.07 of a mile, in Summit County, OH. The line traverses United States Postal Service Zip Code 44305.

CSXT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91

(1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 15, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27©(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 25, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 5, 2003, with: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void ab initio.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment

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<sup>1</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>2</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).



STB Docket No. AB-55 (Sub-No. 631X)

(EA) by April 18, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 15, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at  
"WWW.STB.DOT.GOV."

STB Docket No. AB-55 (Sub-No. 631X)

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary



NATALIE S. ROSENBERG  
Counsel

207879  
Law Department  
500 Water Street  
Speed Code J-150  
Jacksonville, FL 32202  
Fax (904) 359-1248  
Telephone (904) 359-3100

Writer's direct telephone line:  
(904) 359-1253

May 23, 2003

VIA AIRBORNE EXPRESS

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
Mercury Building  
1925 K Street, N.W.  
Washington, D.C. 20423



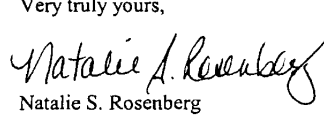
Re: **Docket No. AB-55 (Sub-No. 631X)**  
**CSX Transportation, Inc. Abandonment in**  
**Summit County, Ohio**

Dear Mr. Williams:

This letter is in reference to the above captioned abandonment for the line between former Conrail Milepost 11.49 and a point 150 feet from the point of switch at or near former Conrail Milepost 11.56, known as the Lumber Lead, in Summit County, Ohio. Pursuant to the provisions of 49 C.F.R. 1152.29, CSX Transportation hereby files its notice of consummation signifying that it has fully exercised the authority granted effective May 23, 2003.

Please feel free to contact my office if you have any questions regarding this matter.

Very truly yours,

  
Natalie S. Rosenberg

NSR/pkw

cc: Rail Services Update  
6343 Merritt Ridge  
Madison, Wisconsin 53718-3118



STATE OF OHIO  
OFFICE OF THE ATTORNEY GENERAL  
JIM PETRO, ATTORNEY GENERAL

JUN 20 2003

140 E. Town St., 12th Floor  
Columbus, OH 43215-6001  
(614) 466-7020  
FAX (614) 466-1756  
www.ag.state.oh.us

June 17, 2003

Frank J. Reed, Jr., Esq.  
c/o BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF, L.L.P.  
88 East Broad Street, Suite 900  
Columbus, Ohio 43215-0350

RE: Embargo of Akron rail trestle

*Frank*  
Dear Mr. Reed:

Pursuant to your request of June 11, 2003, served upon James E. Seney, Executive Director of the Ohio Rail Development Commission ("ORDC"), I am writing on behalf of my client to inform you that ORDC is not in possession of any records concerning the trestle located approximately .9 miles south of the Terminal Warehouse, Inc. in Akron.

If you have any further requests, please do not hesitate to contact me at 466-8146.

Very truly yours,

Alan H. Klodell  
Associate Assistant Attorney General  
Transportation Section  
Ohio Rail Development Commission

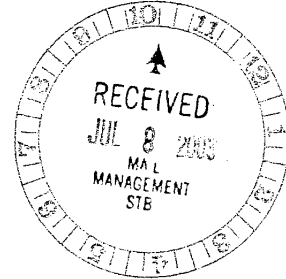
AHK:km

cc: James E. Seney, Executive Director, ORDC  
Matthew Dietrich, Asst. Director, ORDC

Reed ltr 6 17 03

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Docket No. AB-55 (Sub No. 631X)

CSX TRANSPORTATION, INC. –  
ABANDONMENT EXEMPTION –  
IN SUMMIT COUNTY, OHIO

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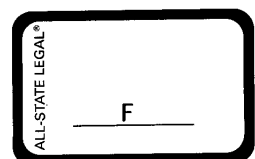
PETITION TO REVOKE CSX'S NOTICE OF EXEMPTION FROM ABANDONMENT  
PROCEDURES BASED UPON FALSE AND/OR MISLEADING INFORMATION

---

Eric Larson Zalud (Ohio Atty. Reg. No. 0038959)  
Frank J. Reed, Jr. (Ohio Atty. Reg. No. 0055234)  
BENESCH, FRIEDLANDER COPLAN &  
ARONOFF, LLP  
88 E. Broad Street, Suite 900  
Columbus, Ohio 43215  
(614) 223-9300/(614) 223-933 (Fax) (Columbus)  
(216) 363-4178/(216) 363-4588(Fax) (Cleveland)

Counsel for Petitioner Terminal Warehouse, Inc.

Dated: July 3, 2003



**A. Introduction**

Now comes Terminal Warehouse, Inc. ("Terminal Warehouse"), by and through the undersigned counsel, and petitions the Surface Transportation Board (the "Board") to immediately revoke the exemption, filed March 25, 2003, wherein CSX Transportation, Inc. ("CSX") proposed to abandon the single remaining rail line which provides rail access to Terminal Warehouse and other shippers located in Akron, Summit County, Ohio. Terminal Warehouse submits that CSX's Notice of Exemption contained false and/or misleading information and otherwise failed to disclose critical facts to this Board. On this basis, and pursuant to 49 CFR 1152.50(d)(3), Petitioner submits that the notice of exemption should be summarily rejected by the Board on the basis that said notice was void *ab initio*. Moreover, under 49 U.S.C. 10502(d), Petitioner requests that the Board find that the continued existence of this line is necessary to carry out the rail transportation policy set forth in 49 U.S. 10101. Therefore, Petitioner requests that the Board immediately revoke the exemption.

**B. Background Facts**

Terminal Warehouse is a public/contract storage and distribution company located in Akron, Summit County, Ohio. Terminal Warehouse currently operates three facilities in the Akron, Ohio area. One of the facilities is located 989 Home Avenue Akron, Ohio 44310, and occupies approximately 137,000 square feet. Until the events described more fully herein, the Home Avenue facility and the Marvo Drive facility have enjoyed access to one or more railroad lines. (See Affidavit of Bill Hanlon attached as **EXHIBIT 1**).

Terminal Warehouse employs 69 employees. *Id.* Terminal Warehouse, Inc. has operated the Home Avenue facility since approximately 1989. *Id.* Company records indicate that the facility has received regular railroad traffic for several years, at least since the mid-1960's. *Id.*

Shippers typically transport goods or raw materials to Terminal Warehouse's facilities by truck or by rail for storage and distribution. *Id.* Transportation by rail is cheaper and more efficient because a rail car can hold two and one half times the capacity of material as one regular truck load can. *Id.*

During the last several years, several shippers have transported raw materials or goods to Terminal Warehouse's Home Avenue facility on several occasions. *Id.* The only access for rail traffic to Terminal Warehouse is the line of railroad which includes the line from former Conrail Milepost 11.49 to a point 150 feet from the point of switch at or near former Conrail post 11.56, known as the Lumber Lead, (hereinafter, the "Line"), a distance of approximately 0.07 of a mile, which traverses through United States postal service ZIP Code 44305 in Summit County, Ohio. *Id.* Company records indicate that the most recent shipment made by rail across this line was sent by NYCO on or about January 20, 2001. *Id.* The rail carrier for that shipment was CSX. *Id.*

In approximately September, 2001, Terminal Warehouse learned that at some point earlier in the summer of 2001, AT&T had been installing a cable along the rail line right-of-way and damaged the rail trestle owned and operated by CSX. *Id.* The rail trestle passes over Eastwood Avenue near the intersection of Eastwood and Home Avenues in Akron, Ohio. *Id.* All train traffic destined for Terminal Warehouse must pass over this trestle. *Id.*

Unbeknownst to Terminal Warehouse, on or about August 2, 2002, CSX declared this rail line corridor unsafe, due to the damage, and apparently embargoed the line. *Id.* At no time did CSX ever send written notice to Terminal Warehouse of this incident or of CSX's determination that the line was unsafe for rail traffic. *Id.* However, Terminal Warehouse knew

that it could not accept goods or raw materials by rail, as this rail corridor is the only access for railroad traffic to its facility. *Id.*

Sometime in late July or early August, 2002, Terminal Warehouse learned that CSX completely removed the rail trestle and a portion of the railroad lines leading to Terminal Warehouse's Home Avenue facility along Eastwood. *Id.* At no time did CSX notify Terminal Warehouse, any government agency or this Board, either verbally or in writing of CSX's intention to remove this trestle. *Id.*

On March 26, 2003, CSX filed with the Board a Notice of Exemption pursuant to 49 CFR Part 1152. The purported basis of the Exemption Notice was that: "no local traffic has moved over the line for at least two years, there is no overhead traffic on the line, no formal complaint filed by a user of rail service on the line (or state or local government agency acting on behalf of such user) regarding cessation of service over the line is either pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period."

CSX did not notify anyone of the damage to the trestle, the embargo, or the fact that in late July or early August, 2002, CSX removed part of its rail structure, thereby preventing local traffic from moving across this line. *Id.* CSX did not so notify anyone of these facts before it took these actions, nor did CSX disclose this material fact in its Notice of Exemption filed with the Board March 26, 2003. *Id.*

As is more fully explained herein, Terminal Warehouse and its customer shippers have been harmed and will continue to suffer harm if this rail abandonment is not revoked by this Board, and rail service is not eventually restored.

In addition to the rail traffic which will be lost, another shipper, B & F Polymers Company, is temporarily storing two rail "hopper" cars on rail siding owned by Terminal



Warehouse. *Id.* The only access to the rail siding owned by Terminal Warehouse is through the Line proposed to be abandoned by CSX. *Id.* If the rail Line is abandoned, the rail cars will be permanently isolated. *Id.* Further, if this rail Line is permitted to be abandoned, neither B & F Polymers nor Terminal Warehouse will ever have the ability to move or otherwise use these two hopper cars for anything other than perpetual storage. *Id.*

### *C. Law and Argument*

Normally, rail carriers must follow certain procedures in order to obtain the permission of this Board to abandon a rail line. 49 U.S.C. 10903. Under the normal abandonment procedures, a rail carrier is required to notify "significant users of the line."

49 U.S.C. § 10903 states in part:

A rail carrier providing transportation \* \* \* who intends to

- (A) abandon any part of its railroad lines; or
- (B) discontinue the operation of all rail transportation over any part of its railroad lines, must file an application thereof with the Board.

The application must contain certain information and must be sent by certified mail to the "Chief Executive Officer" of each State that would be directly affected by the proposed abandonment or discontinuance; post a copy of the notice in each terminal and station on each portion of the railroad line proposed to be abandoned or over which all transportation is to be discontinued; publish a copy of the notice for three consecutive weeks in a newspaper of general circulation in each county in which each such portion is located; mail a copy of the notice, to the extent practicable to all shippers that have made significant use of the railroad line during the 12 months preceding the filing of the application; and attach an affidavit certifying that these conditions have been satisfied within the most recent 30-days prior to the date the application is filed. *Id.* at §10903(a)(3).

A rail carrier may abandon or discontinue operation only if the Surface Transportation Board finds that the "present or future public convenience and necessity require or permit the abandonment or discontinuance." 49 U.S.C. 10903(d). In making this determination, the Board must consider whether the abandonment or discontinuance will have a "serious, adverse impact on rural and community development." *Id.*

However, Congress has provided that a rail carrier can be exempt from the normal abandonment procedures if the rail carrier certifies that it meets certain conditions. 49 U.S.C. 10502. Under the exempt abandonment procedures, the rail carrier is not required to notify significant users of the line. In order to qualify for the exempt procedure, the rail carrier must certify the following information:

An abandonment or discontinuance of service or trackage rights is exempt if the carrier certifies that no local traffic has moved over the line for at least two years and any overhead traffic on the line can be rerouted over other lines and that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The complaint must allege (if pending) or prove (if decided) that the carrier has imposed an illegal embargo or other unlawful impediment to service.

49 CFR 1152.50(b)

But, if the notice of exemption contains false or misleading information, the use of the exemption is *void ab initio* and the Board shall summarily reject the exemption notice. 49 CFR 1152.50(d)(3). Moreover, under 49 U.S.C. 10502(d), the Board may revoke the exemption (in whole or as it applies to a particular line) if the Board finds that the regulation is necessary to carry out the rail transportation policy set forth in 49 U.S. 10101.

A line is considered "out-of-service" when no traffic has originated or terminated on the line for at least two years. *Exempt of Out of Service Rail Lines*, 2 I.C.C.2d 146 (1986) (Exemption) *aff'd sub nom. Illinois Commerce Comm'n v. I.C.C.*, 848 F. 2d 1246 (D.C. Cir., 1988) cert. den. 488 U.S. 1004 (1989). The party seeking revocation has the burden of proof, and petitions to revoke must be based upon reasonable, specific concerns. *CSX Transp., Inc.-Baan.-In Randolph County, WV*, 9 I.C.C. 2d 447 (1992).

When it is shown that a carrier falsely certifies that no traffic moved on a line, the notice of exemption is declared void *ab initio* under 49 CFR 1150.50(d)(3). See *The St. Lois Southwestern Railway Company—Abandonment Exemption—In Gasconade, Maries, Osage, Miller, Cole, Morgan, Benton, Pettis, Henry, Johnson, Cass and Jackson Counties, MO*, Docket No. AB-39-(Sub-No. 18X), (ICC served April 1, 1994); *Southrail Corporation—Abandonment Exemption—Between Laurel and Bay Springs, MS, in Jones and Jasper Counties, MS*, Docket No. AB-301 (SubNo. 2X) (ICC served Jan. 27, 1989).

CSX certified that no local traffic has moved over the Line for at least two years. CSX filed its Notice on March 26, 2003. The last shipment on the Line was January 20, 2001. However, the rail Line had been declared unusable since late July or August, 2002 due to CSX's embargo of the Line. So, although it is technically true that no traffic had moved over the Line for two years prior to the filing of the notice of exemption, this statement was very misleading. The truth is that after CSX embargoed the Line, it was impossible for local rail traffic to move over the Line. CSX had a duty to repair the Line in a timely fashion. CSX should not be rewarded for its failure to promptly repair the Line and provide service. Likewise, CSX should not be allowed to now take advantage of the Notice Abandonment Exemption procedures. Such

action would be unfair to the shippers in this area and be contrary to the rail transportation policy set forth in 49 U.S. 10101.

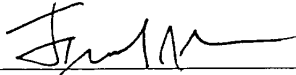
Courts have held that a rail carrier cannot engage in an unlawful or unreasonable embargo, and then simply abandon a rail line. *See GS Roofing Products Co., Inc. v. Surface Transportation Board*, 143 F.3d 387 (1998) (railroad's embargo of branch line after it was damaged in storm was unreasonable, supporting shipper's actions for damages, where railroad could have made minor interim repairs that would have allowed line to operate as it had before the storm; cost of resuming service on branch line at pre-embargo levels rather than expense of rehabilitating line to Class I standards was proper standard for assessing cost of repair when assessing reasonableness of railroad's embargo), *see also, GS Roofing Products Co., Inc. v. Surface Transportation Board* (2001), 262 F.3d 767, 777 (shipper met burden of showing that it would have earned profits on contract it was forced to cancel because of rail carrier's unreasonable embargo, and thus was entitled to recover lost profits).

In its Notice of Exemption, CSX failed to certify that any overhead traffic on the line can be rerouted over other rail lines. This is because the traffic that normally travels on the Line *cannot* be rerouted. This rail Line is the exclusive line which provides rail access to Terminal Warehouse (*See Affidavit of Bill Hanlon*). If the Board allows this abandonment to proceed, Terminal Warehouse and the shippers and customers it serves will simply no longer be able to transport goods or raw materials to this facility by rail car.

**WHEREFORE**, for all these reasons, Petitioner respectfully requests that this Board declare that the Notice of Exemption contains false and/or misleading information, declare use of the exemption *void ab initio*, and summarily reject the exemption notice pursuant to 49 CFR 1152.50(d)(3). Moreover, under 49 U.S.C. 10502(d), Petitioner requests that the Board find that

the continued existence of this line is necessary to carry out the rail transportation policy set forth in 49 U.S. 10101, and therefore immediately revoke the exemption.

Respectfully submitted,



Eric Larson Zalud (Ohio Atty. Reg. No. 0038959)

Frank J. Reed, Jr. (Ohio Atty. Reg. No. 0055234)

BENESCH, FRIEDLANDER COPLAN &

ARONOFF, LLP

88 E. Broad Street, Suite 900

Columbus, Ohio 43215

(614) 223-9300/(614) 223-933 (Fax) (Columbus)

(216) 363-4178/(216) 363-4588(Fax) (Cleveland)

Counsel for Petitioner Terminal Warehouse, Inc.

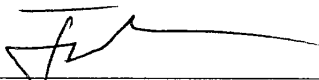
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served by ordinary  
U.S. mail, postage prepaid, this 7th day of July, 2003, upon the following:

Louis E. Gitomer  
Ball Janik LLP  
1455 F Street, N.W., Suite 225  
Washington, D.C. 20005

Natalie S. Rosenberg  
CSX Transportation  
Law Department  
500 Water Street (J150)  
Jacksonville, FL 32202

Attorneys for Respondent

  
\_\_\_\_\_  
Frank J. Reed, Jr.

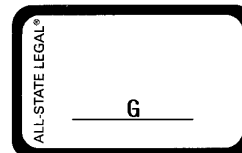
AFFIDAVIT

State of Ohio

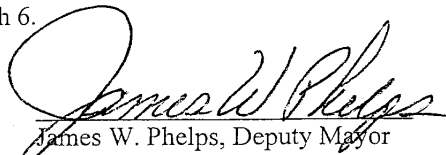
Summit County, SS:

Now comes James W. Phelps, Deputy Mayor for the City of Akron, who, after being duly sworn according to law, deposes and states the following from his personal information and belief.

1. I am the Deputy Mayor and the Director of the Mayor's Office of Economic Development for the City of Akron.
2. On or about February 3, 2003, CSX Transportation, Inc. ("CSX") sent a letter to the City of Akron. (Exhibit A). That letter was addressed to the City's Planning Department at 528 E. South Street, Akron, Ohio 44311-1843. This letter was sent to the wrong address, but was eventually routed to the affiant.
3. That letter advised that CSX was considering abandonment of a portion of its rail line located in Akron, Ohio. The letters invited comment on this proposal from the City of Akron.
4. The City of Akron is a member of the Northeast Ohio Four County Regional Planning and Development Organization ("NEFCO") which serves as a regional clearinghouse and planning agency for Portage, Stark, Summit, and Wayne counties in Ohio.
5. The affiant has received a copy of a memo dated February 24, 2003, in which Sylvia Chinn-Levy, the Intergovernmental Review Coordinator for NEFCO advises CSX that NEFCO intended to seek comments from interested parties and consider this matter at its next regular board meeting on March 13, 2003 at 9:30 a.m.
6. The affiant has received a copy of an e-mail dated March 18, 2003, from Ms. Chinn-Levy (Exhibit C). The e-mail states that a rail trestle that extended over Eastwood Avenue had been removed, and that after the bridge was removed it was impossible to use the rail line. The e-mail also states that rail service could be restored by: (1) replacing the bridge, or (2) installing a switch either north of south of the businesses that had been served by rail. The switch would allow trains to either "over or under-shoot" the business and then back up to make their deliveries.
7. The affiant has received a copy of a Resolution of the NEFCO General Policy Board dated March 19, 2003, advising CSX that NEFCO was not ready to give its approval to this proposed abandonment until CSX answered additional questions.
8. The affiant has received a copy of an Environmental Report that purports to be an Exhibit to a Notice of Exemption that CSX filed with the Surface Transportation Board (Exhibit D).



9. The first page of this Environmental Report contains the following language: "The only patron, Terminal Warehouse, has not generated any originating or terminating traffic during the past two years with no known future prospects. . . . The only alternative would be not to abandon and to pass the opportunity costs of retaining the line to all other CSXT customers. This would not be a prudent utilization of carrier resources."
10. The second page of this Environmental Report contains the following language: "Applicant has not received any comments to its letter of February 3, 2003, to the City of Akron Planning Department, Summit County Planning Commission, and the Northeast Ohio Four County Regional Planning and Development Commission."
11. The affiant has received a copy of a letter written by Ms. Chinn-Levy to CSX and dated May 22, 2003 (Exhibit E). The letter states that CSX abandoned the line, despite NEFCO's recommendation for a delayed clearance. Further, the letter indicated that NEFCO "strongly suggests that CSX communicate with affected property and business owners whose business investments are negatively affected by the termination of rail service. Alternatives to the abandonment, such as reinstalling service from the north end of this line, should also be considered. The committee also recommends that in future abandonments, CSX should notify all parties who may be affected in a timely manner so that the economic viability of the area can be preserved."
12. The affiant has assumed that the attached Exhibits are true and correct copies of their original counterparts and expresses no opinion as to the veracity of any of the statements or facts contained in the attached Exhibits.
13. Based solely on the information contained in the attached Exhibits, the affiant believes that the statements contained in the Environmental Report are misleading because (a) other alternatives that would have maintained rail service did exist and still do exist (as discussed in paragraph 6) and (b) CSX was aware that NEFCO had requested additional time to consider granting clearance (as discussed in paragraphs 5 and 7).
14. The affiant believes that Terminal Warehouse, Inc. and its customer shippers have been harmed and will continue to suffer harm if rail service is not eventually restored. Restoring service to this line is critical to current and future property and business values for several commercial properties adjacent to this line.
15. The affiant believes that rail service should be restored, at CSX's expense, by one of the two alternatives listed in paragraph 6.

  
James W. Phelps, Deputy Mayor  
City of Akron, Ohio



Sworn to and subscribed before me, a notary public, this 21st day of August, 2003.

Connie M. Mitchell  
Notary Public

*My Commission Expires May 12, 2007*



# Ohio Rail Development Commission

50 West Broad Street, Suite 1510 • Columbus, Ohio 43215 • (614) 644-0306 phone • (614) 728-4520 fax

August 25, 2003

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Mercury Building  
1925 K Street, N.W.,  
Washington, D.C. 20423

RE: Docket No. AB-55 (Sub-No. 631X), CSX Transportation, Inc.  
Abandonment Exemption in Akron, Ohio - Summit County.

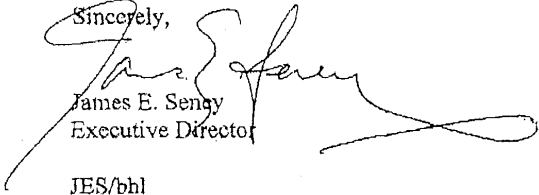
Dear Mr. Williams:

The Ohio Rail Development Commission (ORDC) is writing to express our interest in preserving and promoting continued rail service to all Ohio rail shippers. In addition, a primary mission of ORDC is to preserve viable rail infrastructure and rail corridors throughout the State of Ohio. ORDC thus endorses the ongoing investigation of the Surface Transportation Board (STB) regarding CSX Transportation's (CSXT) Notice of Exemption to abandon .07 miles of track located in Akron, Ohio. ORDC understands that other entities: the City of Akron, Metropolitan Regional Transit Authority, Terminal Warehouse and B&F Polymers have related their individual perspectives regarding this issue.

ORDC also recognizes that CSXT works diligently to maintain its financial viability while simultaneously maximizing its return on investments and does not desire to question CSXT's business rational for its decision. However, ORDC requests that the STB take whatever action necessary to ensure the preservation of the rail infrastructure and rail corridor at issue for all current and future rail-dependent users.

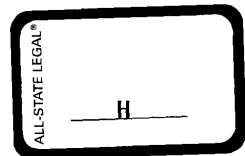
Thank you for your consideration.

Sincerely,

  
James E. Sengy  
Executive Director

JES/bhl

Building Markets, Linking Cities and Securing Ohio's Future



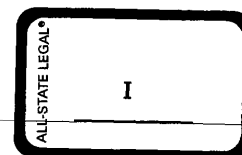
## AFFIDAVIT

State of Ohio

Summit County, SS:

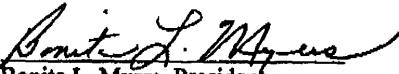
Now comes Bonita L. Myers, President and owner of B & F Polymers, who after being duly sworn according to law, deposes and states the following from her personal information and belief.

1. I, Bonita L. Myers, am the President and owner of B & F Polymers, a broker and distributor of formulated polymers. The company headquarters is located at 1907 Brookwood Drive Akron, Ohio 44313.
2. Our company has had a business relationship with Terminal Warehouse, Inc. for the last several years.
3. In approximately November, 1999, the B & F Polymers Company entered into a monthly contract with Terminal Warehouse. The contract called for the temporary storage of two rail "hopper" cars, owned by B & F Polymers, to be placed on the rail siding owned by Terminal Warehouse. The rail siding is adjacent to the East side of the Home Avenue facility, and runs parallel to the rail spur extending from the Eastwood Avenue trestle.
4. Our company regularly receives shipments of raw product transported by rail car.
5. Our company normally receives approximately one rail car of product every other month. The raw product is usually polyethylene plastic pellets, and is delivered in what is known as a "hopper" rail car.
6. It had always been our company's plan to deliver this product by rail car directly to Terminal Warehouse, and temporarily store the product in one of our two rail cars located on the siding owned by Terminal Warehouse until the customer is ready to accept delivery.
7. One rail car holds approximately four truckloads of product. Based upon my experience, we believe it more efficient and less expensive to deliver this product by rail than by truck.
8. At some point, I learned that the only rail access to Terminal Warehouse had been damaged, and that rail cars could not travel to Terminal Warehouse.
9. As such, our company could only ship to other warehouses in the Akron area. Currently, our shipment is delivered to a warehouse in Akron, Ohio known as Cotter Merchandise Storage Company of Ohio located at 1564 Firestone Parkway, Akron, Ohio, 44301.




10. Once the shipment of raw product arrives by hopper rail car, our company hires a "hopper" tractor-trailer to unload the product, and then deliver the raw product to the two rail cars currently located on the siding adjacent to the track that CSX proposes to abandon. This method of delivery is more expensive than if we could ship our product directly by rail car to Terminal Warehouse.
11. Once I learned that the Eastwood Avenue bridge/rail trestle had been damaged, and then removed, my company lost any ability to deliver raw product by train car to our rail cars. Furthermore, we lost the ability to move our rail cars for the purposes of the transportation of goods.
12. If the rail line is permitted to be abandoned, neither B & F Polymers nor Terminal Warehouse will ever have the ability to move or otherwise use these two hopper cars for anything other than perpetual storage.
13. Terminal Warehouse and B& F Polymers has utilized rail traffic for several years. B & F Polymers and Terminal Warehouse and our customer shippers have been harmed and will continue to suffer harm if this rail abandonment is not revoked by this Board, and rail service is not eventually restored.
14. As such, B& F Polymers joins Terminal Warehouse and respectfully requests that the Surface Transportation Board declare that the Notice of Exemption contains false and/or misleading information, declare use of the exemption void *ab initio*, and summarily reject the exemption.

Further, Affiant sayeth naught.

  
Bonita L. Myers, President  
B & F Polymers, Inc.

Sworn to and subscribed before me, a notary public, this 5 day of August, 2003.

  
Notary Public



SHAUN E. KIEL  
Resident Summit County  
Notary Public, State of Ohio  
My Commission Expires April 6, 2008

From: nefco@att.net

To: tatumthj@ci.akron.oh.us, anglile@ci.akron.oh.us, epalmer@cityofbarberton.com, bholland@  
Subject: CSX Railroad Abandonment

Date: Tue, 18 Mar 2003 16:05:11 +0000

I obtained a map from METRO showing the rail line proposed for abandonment. I thought I should be more informed for tomorrow's Board meeting! The map is oversized (or at least not small enough to fax easily), but if you'd like the key portion faxed to you today, I can do so. Just let me know.

Basically, the line in question was used last over 2 years ago deliveries to Akron Terminal Warehouse. Over 5 years ago, deliveries were made to Lumber Jack's. The abandoned portion starts just north of Eastwood Ave. and continues south to an area north of the Little Cuyahoga River. Kirt Conrad of METRO said that a bridge on Eastwood Ave. was removed by the City of Akron for public safety reasons, making it impossible to use this line (thus the reason for abandonment). As mentioned before, CSX will probably not sell this line, just abandon it. Should Akron Terminal Warehouse and Lumber Jacks need service in the future, they could be accessed by installing a switch farther north or south of the businesses on the CSXT mainline. The trains would then either over- or under-shoot the businesses and then back up to make their deliveries. The question at that point is who would pay for the switch (about \$60,000).

That's about all the rail knowledge I care to admit! If you need more info, please call me or Kirt Conrad. I'll be at the Board meeting tomorrow.  
Sylvia

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